

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Qualcomm Incorporated)	WT Docket No. 05-7
Petition for Declaratory Ruling)	
)	

To: Office of the Secretary
Attn: Wireless Telecommunications Bureau,
Mobility Division

REPLY COMMENTS OF MEDIA GENERAL, INC.

Media General, Inc. ("Media General"), by its attorneys, hereby submits this reply in response to comments filed regarding the Petition for Declaratory Ruling ("Petition") of Qualcomm Incorporated ("Qualcomm").¹ Television Station WBTW(TV), Florence, South Carolina, licensed to an affiliate of Media General, operates DTV facilities on Channel 56 in the so-called "Lower 700 MHz Band" where Qualcomm holds licenses as a new entrant. Despite that Qualcomm accepted these licenses with the understanding that it could not interfere with incumbent broadcast television stations prior to the end of the DTV transition, Qualcomm seeks to change that balance with three interrelated proposals: (1) permitting the use of OET-69 to demonstrate compliance; (2) defining "compliance" as allowing interference to 2% of a television station's service area population; and (3) shifting the burden to broadcasters, within fourteen days of notice, to prove that new entrant operations are not in compliance. As commenters point out in various fashion, the Commission is not free to grant the Petition.

¹ "Pleading Cycle Established for Qualcomm Incorporated Petition for Declaratory Ruling," *Public Notice*, DA 05-87 (Jan. 18, 2005) ("*Public Notice*"). The comment date subsequently was extended to March 10, 2005. See Qualcomm Incorporated Petition for Declaratory Ruling, *Order*, DA 05-419 (rel. Feb. 15, 2005).

I. QUALCOMM SEEKS SUBSTANTIVE CHANGES TO INTERFERENCE STANDARDS THAT CANNOT BE ADOPTED OUTSIDE A RULEMAKING.

Media General agrees with MSTV/NAB that Qualcomm's proposals cannot be adopted outside notice-and-comment rulemaking.² The Commission's rules and policies regarding 700 MHz operation are unambiguous: new entrants must fully protect incumbent television stations. Indeed, the protection of broadcasters in the Lower 700 MHz Band during the DTV transition is so elemental the Commission characterized it as a "core value:"

The degree of incumbency in this [Lower 700 MHz] band also underscores the importance of adopting rules that insure that new licensees provide adequate protection to incumbent broadcasters. We emphasize that ***we have an obligation to fully protect incumbent full-power analog and digital broadcasters*** during the transition period, and adopt rules that support this *core value*.³

The Commission nonetheless gave new entrants an opportunity to expand service. The Commission allowed that it would waive full protection only if the new entrant obtained the "written concurrence" of the television station affected.⁴ This protection regime, the Commission said, constituted a "reasonable balance between the needs of both DTV stations and new services."⁵ The Commission properly adopted this protection standard pursuant to notice-and-comment rulemaking, and no party opposed it.⁶

Qualcomm impermissibly seeks now to eliminate this full protection outside of notice-and-comment rulemaking. As such, the Commission must dismiss the Petition or treat it as a Petition for Rulemaking. Qualcomm proposes substantive changes to Section 27.60, and, as

² See MSTV/NAB Comments at 5-8.

³ Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59), *Report and Order*, 17 FCC Rcd 1022, ¶ 38 (2002) ("*Lower 700 MHz R&O*") (emphasis added).

⁴ 47 C.F.R. § 27.60(b)(1)(iv).

⁵ Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59), *Notice of Proposed Rule Making*, 16 FCC Rcd 7278, ¶ 31 (2001) ("*Lower 700 MHz NPRM*").

⁶ *Lower 700 MHz R&O*, ¶ 52.

MSTV/NAB explain, the Commission only may amend a legislative rule such as this pursuant to notice-and-comment rulemaking.⁷ This requirement cannot be met by assertions that the Bureau's *Public Notice* somehow satisfies the APA's notice obligations, especially given that the *Public Notice* never was even published in the Federal Register.⁸ Qualcomm's attempt here to "streamline" the Commission's notice obligations and circumvent the rulemaking process should be rejected.

II. QUALCOMM MUST "FULLY PROTECT" VIEWERS OF INCUMBENT TELEVISION STATIONS.

Grant of Qualcomm's three proposals impermissibly would eliminate full protection of incumbent broadcast stations. The Commission allowed new entrants to commence services in the Lower 700 MHz Band "provided they do not interfere with existing analog and digital broadcasters."⁹ Qualcomm had full notice of this when it bid on its licenses, and likewise understood that television stations could encumber the spectrum indefinitely.

Qualcomm nonetheless wishes to dilute the "core value" of full protection to incumbent stations, asking the Commission to characterize 2% interference as *de minimis* (as is done for DTV stations). If the Commission granted Qualcomm's proposals, however, it would do more than rescind its assurances of full protection to incumbent stations – assurances, by the way, that Qualcomm and other bidders, including losing ones, relied upon. The Commission in fact would be eliminating free, relied upon broadcast television service on a significant scale, contrary to Congressional wishes and the Commission's own precedent.

⁷ MSTV/NAB Comments at 6.

⁸ See 47 U.S.C. § 553(b)(2); *USTA v. FCC*, 2005 WL 562744 at *9.

⁹ *Lower 700 MHz R&O*, ¶ 6.

Media General agrees with Cox that a fundamental objective of the DTV transition – out of which Qualcomm’s opportunity to commence services directly flows – was to avoid disenfranchising television viewers.¹⁰ Accordingly, the Commission has been loathe to countenance service reductions to facilitate the introduction of digital television or new 700 MHz services. Just last month, the Commission denied a request by a television station to halt out-of-core operations even though it would have eliminated an encumbrance to 700 MHz operations. The Commission said that it considered the service loss to 0.25% of the service area population – much less than the 2% Qualcomm proposes – to be “significant.”¹¹ This action is consistent, as Cox explains,¹² with the Auction Reform Act of 2002, where Congress prohibited the Commission, if interference would be caused to television stations, from entertaining “interference waivers” to help new licensees such as Qualcomm introduce their services.¹³ Even disregarding the “unjust enrichment” that Congress sought to prevent in a spectrum grab such as proposed here,¹⁴ Media General does not see how the Commission could square grant of Qualcomm’s proposals with these actions, much less with its prior assurances of full protection to incumbent stations.

Underlying service loss concerns is the importance of free, over-the-air broadcast service to the public interest. Media General emphatically agrees with Pappas that Qualcomm’s attempts to diminish this importance reflect “an incorrect and narrowminded, even elitist”

¹⁰ Cox Comments at 2-3.

¹¹ Letter from W. Kenneth Ferree, Media Bureau Chief, *Federal Communications Commission*, to Barry A. Friedman, Counsel, *KJLA, LLC*, DA 05-343 (Feb. 9, 2005).

¹² Cox Comments at 6.

¹³ Auction Reform Act of 2002, Pub. L. No. 107-195, 116 Stat. 715, § 6.

¹⁴ *Id.* § 2(6)(B). *See also* MSTV/NAB Comments at 21; Cox Comments at 6.

understanding of the public interest value of free, over-the-air television.¹⁵ However Qualcomm may regard those unwilling or unable to pay for video services, the fact is, as MSTV/NAB point out, that there are 73 million television sets in the country unconnected to pay services – roughly a quarter of all sets in use.¹⁶ Moreover, for stations such as Media General’s WBTW-DT, over-the-air reception is the only certain means for delivery of a digital signal while the DTV transition lasts.¹⁷ The loss of television service that Qualcomm proposes materially would harm the public interest.

Qualcomm’s justification for this harm falls short. As NAB/MSTV, Pappas, and Cox all state, the Commission adopted its *de minimis* DTV interference standard for entirely different reasons than present here.¹⁸ The *de minimis* standard exists because there is not enough broadcast spectrum both to provide each television station with two channels and to ensure replicated television service.¹⁹ Moreover, as Cox notes, the *de minimis* standard is reciprocal in nature,²⁰ and Qualcomm never suggests that broadcasters could reciprocally expand service into its territories. Accordingly, transferring the *de minimis* DTV interference standard to Qualcomm’s 700 MHz operations not only is impermissible, it would be unreasonable as well.

¹⁵ Pappas Comments at 8.

¹⁶ MSTV/NAB Comments at 20.

¹⁷ DTV stations obtain carriage rights only after analog service ends. Carriage of Digital Television Broadcast Signals, *Second Report and Order and First Order on Reconsideration*, CS Docket No. 98-120, FCC 05-27, ¶ 27 (rel. Feb. 23, 2005).

¹⁸ MSTV/NAB Comments at 10; Pappas Comments at 6; Cox Comments at 8-9.

¹⁹ See Cox Comments at 9.

²⁰ *Id.*

III. OET-69 IS NOT SUITED FOR PREDICTING QUALCOMM'S INTERFERENCE.

Media General agrees with those who maintain that OET-69 could not predict interference from Qualcomm's wireless services with much precision. MSTV/NAB explain that OET-69 does not consider aggregate interference from a multiple transmitter system, and that it assumes a vertical elevation pattern different from that Qualcomm likely would employ.²¹ Cox further notes that OET-69 is not designed to measure interference from transmitters operating within a television station's service contour, such as Qualcomm contemplates.²² Moreover, as MSTV/NAB point out, Qualcomm's consulting engineer has argued that OET-69 may not adequately predict signal propagation in dense urban areas.²³ As such, the Commission has little reason to conclude that OET-69 accurately could predict interference from Qualcomm's services.

IV. CONCLUSION

Qualcomm's proposals are procedurally and substantively defective. The Commission is not permitted to dilute a stated "core value" by eliminating the full protection of incumbent broadcast stations. The Petition, as such, should be dismissed.

Respectfully submitted,
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²¹ MSTV/NAB Comments at 16.

²² Cox Comments, Engineering Statement at 3.

²³ MSTV/NAB Comments at 16-17.